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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/772,581

02/05/2004

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08/06/2007

EXAMINER

KRAMER, DEAN J

ART UNIT

PAPER NUMBER

3652

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/772,581	Applicant(s) CARNEY, BRIAN P.	
	Examiner Esther O. Okezie	Art Unit 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 May 2007.
- 2a) ☒ This action is FINAL.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 29-38 and 40-60 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 29-38 and 40-60 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

The amendment filed on 5/24/2007 and the remarks presented therewith have been carefully considered. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 29-35, 37-50, 52-57, 59, and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maggi US 1,448,558 in view of Tabb US Design Patent 113,023.
2. Re claim 29, 32-35, 39-41, 44, 47-50, 52-57 Maggi discloses a tray comprising: a generally rectangular sheet material defining a broad, solid, continuous, smooth, upper working surface (1) wherein upper working surface is slightly contoured in a continuous dished-out manner from each of the sides of said upper working surface across substantially the extent of said upper working surface (see col. 2, lines 81-96; col. 3, lines 1-15; description of "marginal contour"); said upper working surface capable of retainably holding an operative quantity of cementitious mortar to be worked by an

operator such as by mixing with a trowel or shovel, and being impervious to retain moisture in the mortar

Maggi does not disclose the exact dimensions claimed. The exact contour shape and size/dimensions would be an obvious matter of design choice dependant upon the amount of mortar one desired to hold within the device. See Specification, page 7, lines 13-21, wherein Applicant discusses the degree, depth, dimensions of the invention can vary. It would have been obvious to one of ordinary skill at the time of the invention to modify the dimensions of the device since such modification would have involved a mere change in size of a component and change in size is generally recognized as being within the level of ordinary skill in the art.

Maggi discloses handles (5) capable of allowing the mortarboard to be carried in a generally vertical manner when not in operative use. Maggi does not disclose the sheet of material defining a cut-out handle portion formed entirely through said sheet material adjacent one edge of said material, wherein the cut -out is sized to accept a persons hand. Tabb discloses a tray including cutout area portions forming handles (fig 1). It would have been obvious to one of ordinary skill at the time of the invention to modify the handle of Maggi as taught by Tabb to form a cut out area portion for the user to easily grip the device.

3. Re claims 30,31,43,45,46,and 60, Maggi discloses the device may be constructed of any suitable material and is capable of holding numerous dishes (col. 2, lines 80-85). Maggi does not describe the material is of a strength to resist breaking or damage when stuck by a hammer or other tools. It would have been obvious to one of

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ordinary skill at the time of the invention to construct the device with a material of suitable strength to resist damage when used with conventional tools, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use.

4. Re claims 37 and 38, Maggi discloses raised peripheral lip portions (5) along two sides of said upper working surface. Maggi does not disclose lip portions along three sides or the dimensions of these portions. It would have been obvious to one of ordinary skill at the time of the invention to modify the dimensions of the device since such modification would have involved a mere change in size of a component and change in size is generally recognized as being within the level of ordinary skill in the art.

5. Re claims 42 and 59, Clearly the tray of is capable of being configured so that a front and rear surface of the material will nest together with other trays of like construction, when more than one tray is stacked together.

6. Claims 36 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Maggi and Tabb US Design Patent 113,023 as applied to claims 29 and 44 above and further in view of Malvasio US 5,558,253. The combination does not disclose the material includes supporting ribs formed integrally with the material. Malvasio discloses a lightweight and strength reinforced taco plate with reinforcing ribs (12) built into the plate. The combination and Malvasio are analogous art because they both include support of various articles by a tray surface and are capable of supporting, carrying, and retaining mortar. It would have been obvious to one of ordinary skill at the time of the invention to modify the device of the combination as

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taught by Malvasio to include reinforcing ribs formed integrally into the device in order to "... strength-reinforce the plate and protect it from abnormal twisting or certain bending..." (Malvasio: col. 2, lines 50-56).

7. Claim 58 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Maggi and Tabb US Design Patent 113,023 as applied to claims 29 and 44 above and further in view of US Patent Application Publication 2004/0150236 A1 of Hobel et al. The combination does not disclose the bottom surface configured to accommodate a support stand. Hobel et al discloses a mixing palette including a bottom surface that is configured to accommodate a support stand (see figs 4a, 4b, and 5 for palette on support stand). It would have been obvious to one of ordinary skill at the time of the invention to modify the device of the combination to include a bottom surface configured to accommodate support on a support stand in order to support the device during use.

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

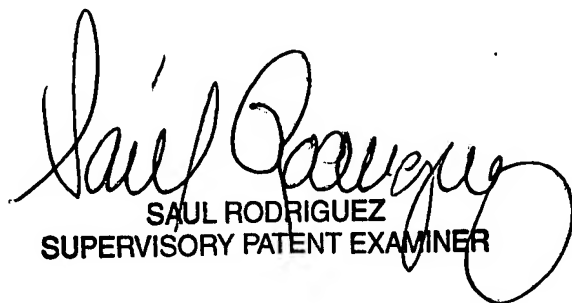
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther O. Okezie whose telephone number is (571) 272-8108. The examiner can normally be reached on Mon-Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene O. Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
EOO  
7/31/07

  
SAUL RODRIGUEZ  
SUPERVISORY PATENT EXAMINER